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Reasons and Results of the 28th Defense order in Jordan under the Coronavirus Pandemic

أمر الدفاع رقم 28 لمواجهة وباء كورونا في الأردن - الأسباب والآثار

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Abstract:

The aim of this study is to investigate the rationale behind Defense Order Number 28 in response to the Coronavirus Disease 2019 (COVID-19) pandemic and its impact on the legal rights of creditors. The study employed an analytical methodology, examining the defense orders, local laws, international conventions, and court decisions. The main findings of the study indicate that the Jordanian case appears to favor debtors, as it allowed for the postponement of imprisonment from March 2020 until the end of December 2022, without offering adequate solutions to protect the rights of creditors. The only recourse given to creditors was the option to request the competent judicial authority to prevent the debtor from leaving the country. On an international level, the study reveals that Defense Order Number 28 was implemented to meet Jordan's international obligations. However, this order contradicts a fundamental principle of Civil law, which is to support and uphold the rights of the right holder. By prohibiting the creditor from employing essential means to claim their rights from the debtor, the order undermines the creditor's position. In conclusion, the study suggests that Jordan is in the process of abolishing imprisonment sentences in civil and commercial transactions, yet it does not provide adequate solutions to safeguard the rights of creditors during this transition.

Keywords: COVID-19; Defense Order; Defense Law; Debtor; Creditor.

المخلص:

جاءت الدراسة بهدف بحث وبيان أسباب أمر الدفاع رقم 28 وآثاره على حقوق الدائن الذي منع بموجبه من طلب حبس المدين حبساً تنفيذياً إذا لم يتجاوز مبلغ الدين 100.000 دينار. مع منح الدائن الحق في التقدم إلى دائرة التنفيذ المعنية بطلب لمنع سفر مدينه. فما الأسباب الحقيقية التي استدعت إصدار أمر الدفاع 28، وما آثاره على الضمانات التي منحها المشرع للدائن. للإجابة عن هذه التساؤلات اتبعت الدراسة المنهج التحليلي في الوقوف على أوامر الدفاع وقانون التنفيذ إضافة إلى أحكام الاتفاقية الدولية للحقوق المدنية والسياسية والاجتهادات القضائية المتعلقة بموضوع الدراسة. وقد توصلت الدراسة إلى مجموعة من النتائج أهمها: مساس ومخالفة أمر الدفاع رقم 28 مبدأ مهماً في القانون في توفير الوسائل القانونية الكافية والكفيلة بحماية حق الدائن، وتمكينه بالنتيجة من حماية حقوقه واستيفائها؛ ومن هذه الوسائل التي مست حق الدائن في طلب حبس المدين لحين الوفاء واستيفاء الدين. وإن مبررات أمر الدفاع وإلغاء حبس المدين لم تقف عند حدود مواجهة آثار الجائحة فقط؛ بل إنها تعدت ذلك إلى تهينة أسباب وفاء الحكومة بالتزاماتها الدولية، وخصوصاً الاتفاقية الدولية للحقوق المدنية والسياسية التي انضمت لها المملكة سابقاً، وأصدرت قانون المصادقة عليها في عام 2006. وقد كانت خلاصة الدراسة هي: توجه المشرع الأردني إلى إلغاء حبس المدين حبساً تنفيذياً، سواء أكان التزامه ناشئاً عن معاملة مدنية أم عن معاملة تجارية؛ وإن هذا الإلغاء سيتم بشكل تدريجي من خلال إدخال تعديلات متعاقبة في قانون التنفيذ. إن هذا التوجه للمشرع الأردني يجب أن يرافقه ضمانات للدائن عوضاً عن حق طلب حبس المدين.

الكلمات المفتاحية: فايروس كورونا؛ أمر الدفاع؛ قانون الدفاع؛ المدين؛ الدائن.

Introduction:

After the International Health Organization's announcement in March 2020, COVID-19 escalated into a global epidemic, necessitating international efforts and cooperation to combat its widespread impact.

Following the Royal Decree on March 18, 2020, the Hashemite Kingdom of Jordan implemented the National Defense Law Number 13 of 1992. This law grants the council of ministry the authority to suspend any enforceable laws in Jordan and empowers the Prime Minister to issue new legal orders.

With Defense Order Number 28, debtor imprisonment was suspended from March 29, 2021, onwards, as long as the total amount adjudicated does not exceed 100,000 JD (approximately \$140,000).

The Importance of the Study:

This study holds significant importance as it focuses on the imprisonment of debtors at the discretion of creditors, which is a primary method used to resolve financial disputes in Jordan. However, this approach has been limited by Order Number 28, and it lacks adequate protection for creditors.

The Problem of the Study:

One of the fundamental principles of law is to protect the rights of individuals, and to achieve this, legislators have implemented various rules. However, with the introduction of Order Number 28, this principle became restricted and inactive for debts not exceeding 100,000 JD. This raises several questions: What is the impact of defense order number 28 (the postponement of debtor imprisonment) on debtor rights? Are there any other safeguards to protect a debtor's rights in such cases? Could this order be the initial step towards abolishing debtor imprisonment in civil and commercial disputes in Jordan? Was this order introduced as a temporary measure to address the effects of the coronavirus on living conditions or for other reasons?

Additionally, the study aimed to explore and provide answers to the above-mentioned questions by analyzing Jordan's laws and court decisions.

Study Objective:

The objective of this study is to address the aforementioned questions.

The Study Methodology:

To answer these questions, the study adopts a descriptive approach, involving a review of governing texts and judicial rulings. Additionally, an analytical approach will be applied to analyze these texts.

The Study Framework limits:

The study is confined within the parameters of national laws, the international convention, and the courtroom context, which define the scope of the research.

The Concept of Jordan's Defense Law:

The Defense Law is established to address various emergency situations such as war, natural disasters, armed security threats, public safety concerns, and epidemics. It grants the council of the ministry the authority to suspend regular laws in order to effectively respond to these emergencies (El-Haija, 2021).

The basis for this governmental power can be traced back to the Jordanian constitution, specifically the Constitution of 1952, and its subsequent amendments in the years 1974, 1976, 1984, and 2011. Article 124 of the constitution outlines that during times of necessity for defending the country in emergency situations, a law known as the Defense Law shall be enacted. This law empowers a designated individual, as specified by the law, to take necessary actions and measures, including the authority to suspend ordinary state laws, all in the interest of safeguarding the nation. The Defense Law comes into effect upon the issuance of a Royal Decree based on a decision by the Council of Ministries.

According to El-Haija (2021), the Defense Law numbered 13 of the year 1992, was initially issued in 2020 based on a specific article in the constitution. The primary purpose of this law is outlined in Article 2, which states that: in case of emergencies jeopardizing national security or public safety anywhere in the kingdom or a particular region due to war, disturbances, armed internal conflicts, public disasters, or the outbreak of a pestilence or epidemic, a National Defense Law shall be enacted through a decision and a Royal Decree.

Furthermore, Article 3 of the law elucidates the necessary measures and procedures for exercising the conferred powers. It states that: (A- The Prime Minister is entrusted with the application of this law and is authorized to take essential measures and actions to ensure public safety and defend the kingdom. The Prime Minister is not bound by the provisions of regular laws in force. B- The Prime Minister shall exercise these powers in accordance with written orders. C- Additionally, the Prime Minister has the authority to delegate all or some of

these powers to individuals deemed suitable, throughout the kingdom or within a specific region, subject to conditions and restrictions that the Prime Minister establishes.

Furthermore, one may find the powers that are given to the Prime Minister under Article 4 of the Defense Law, which prescribes the types of such powers, as the mentioned Article states that: "The Prime Minister may exercise the following powers: A- Placing restrictions on the freedom of people to gather, move, reside, and arrest or detain suspects or those who pose a threat to national security and public order. B- Assigning any person to perform any work or service within their ability. C- Checking persons, places, and vehicles without being bound by the provisions of any order of law and ordering the use of appropriate force in the event of opposition. D- Setting possession of movable and immovable property and postponing debt payment and the accrued liability. E- Preventing or restricting the importation, exportation, or transfer of goods from one place to another and prohibiting their concealment, destruction, purchase, or bartering them, and setting their prices. F- Seizing any land, building, road, or source of water and energy, removing any trees or installations on them, establishing facilities for defense purposes instead and ordering the concerned parties to manage, exploit and organize their use. G- Evacuating or isolating some areas and imposing a curfew on them. H- Ordering some or all public stores to open and close at a specific time. I- Regulating and specifying transportation between different regions, blocking any roads or water stream or changing its direction and preventing traffic or regulating it. J- Monitoring messages, newspapers, publications, pamphlets, drawings, and all means of expression, publicity, and advertisement before they are published and seizing, confiscating, suspending, and closing the places where they were prepared. K- Preventing taking pictures or making designs or maps for any specific place or thing that might benefit the enemy, preventing having any photographic equipment or materials for making photos, designs, or maps in such places, and preventing staying for so long in those places without a legitimate excuse. L- Cancelling licenses of firearms, ammunition, explosives, or explosive materials that are used in the manufacture of explosives, preventing their manufacture, sale, purchase, transfer, disposing them, ordering their delivery and seizure, and closing the shops where they are sold or stored. M- Preventing the manufacture, sale, purchase, or possession of telecommunication equipment and ordering their delivery and seizure."

The Defense orders in Jordan:

Jordan has witnessed thirty-six defense orders since their implementation. Some of these orders pertain to social security matters, such as defense order number 1. Others are related to subjects concerning Labor law and curfew, like order number 6. Additionally, some orders impose punishments for violations of their demands, as seen in defense order number 3, among others.

Discussion: The Reasons for Postponement of Debtor Imprisonment and its Impact on the Creditor Rights:

The postponement of imprisonment was organized under Defense Order Number 28, which was stipulated on the 28th of March 2021, and it remained effective until the 31st of December 2021. Subsequently, further decisions were made to extend its effectiveness until the end of January 2022, then again till the end of December 2022, and later to the end of January 2023. The most recent decision, issued at the end of January 2023 under the number 63, resulted in the reduction of the debt from 100,000 JOD to 20,000 JOD, with an effective duration till the end of April 2023. These defense orders establish the following rules:

First: The implementation of the debtor imprisonment decision, as outlined in Article 22 of the implementation law, no. 25 of 2007, shall be postponed, provided that the total amounts adjudicated do not exceed JD100,000.

Second: The implementation of penal provisions imposing the imprisonment penalty for crimes related to the issuance of a check with no corresponding balance is paused according to the provisions of Article 421 of the Penal Code No. 16 of 1960, only if the total value of a check doesn't exceed JD100,000.

Third: The freedom of travel for individuals covered by the provisions of clauses (1st) and (2nd) of this defense order shall be prohibited, according to a decision issued by the competent judicial authority.

Fourth: The provisions of this defense order shall remain in effect until the end of December 2021.

Fifth: The rules specified in this defense order shall supersede any legal text or legislation that contradicts its provisions.

Sixth: The Prime Minister retains the authority to extend the provisions of this defense order or modify any of its regulations in response to the evolving situation of the corona pandemic.

As for the last provision (Number 6), some provisions were extended while others were amended by decisions made by the Prime Minister. Initially, Order number 28 was extended until the end of June 2022, then further extended until the end of December 2022, and subsequently until the end of January 2023. Finally, on January 31, 2023, Announcement Number 63 was issued, which introduced amendments to Defense Order Number 28. The amendments included the following: First, the cancellation of provisions number one and two from Defense Order number 28 for the year 2021, with the phrase "one hundred thousand Jordan Dinar 100,000"

replaced by "twenty thousand Jordan Dinar 20,000." Second, the extension of the effectiveness of Defense Order number 28 until the end of April 2023.

It is important to note that due to the recent legal developments, the implementation of this defense order has provided debtors with an additional period to avoid imprisonment. This was achieved by extending the provisions of the defense order until the end of January 2023, as stipulated in clause number 6 of the defense order. However, this decision does not impact creditors with outstanding amounts exceeding JD 100,000 or JD 20,000, as stated in the latest announcement. Such creditors are entitled to their rights under Article 22 of the Implementation Law, which allows them to request the competent judicial authority to prevent their debtors from leaving Jordan!

We contend that Jordan's current situation, stemming from the recent decision, favors and protects the debtor, especially since we have not discovered any defense order that guarantees creditors' rights or offers alternative means to compel the debtor to repay. This decision contradicts Paragraph 1 of Article 22 of Implementation Law Number 9 for the year 2022, which granted creditors the right to seek judicial authority to incarcerate the debtor if they fail to pay 15% of the total owed amount and fail to reach a reasonable settlement within fifteen days from the payment notification. The court could potentially imprison the debtor for up to sixty days in one year. In practice, imprisonment in Jordan is considered the most effective method to secure creditors' rights by pressuring debtors to pay under the threat of incarceration, resulting in the majority of debts being paid under this coercive measure.

On the other hand, we believe that the government's approach aligns with Article (11) of the International Covenant on Civil and Political Rights (ICCPR), which ensures the prohibition of using imprisonment as a punishment for breaching contracts. Jordan signed this Covenant on June 30, 1972, and it entered into force on March 23, 1976, finally being published in the Official Gazette in 2006. Notably, it took Jordan approximately 40 years to fulfil its international commitment, and another 15 years after its publication in the Official Gazette to begin implementation. In the meantime, we argue that the Jordanian government had no alternative but to issue Defense Order Number 28. The traditional approach of threatening debtors with imprisonment, unless they pay their debts, proved to be a workable method for creditors to secure their funds. However, this extension left creditors without any legal recourse to protect their rights against unscrupulous debtors, and the defense order fails to provide an effective and viable solution for creditors to safeguard their rights.

Before issuing Defense Order Number 28, some courts in Jordan had decided not to imprison debtors, taking into consideration Article 11 of the ICCPR. For instance, the Aqaba Appellate Court and the Karak Court in 2014 based their decisions on Article 24 of the Jordan Civil Code, which prioritizes enforcing international agreements over national laws.

As a result, the recent modification raises the following question: How can the government comply with international commitments and obligations after postponing the imprisonment of debtors?

We argue that Jordan needs to work on modifying the current implementation code. Recently, we have noticed legislative and judicial efforts attempting to introduce some changes regarding the imprisonment of debtors. One of these modifications pertains to the duration of imprisonment, suggesting that it should be sixty days annually for a single debt, instead of the previous ninety days as stated in the modified law. For multiple debts, the maximum imprisonment duration would be one hundred twenty days, compared to the previous modified code where the creditor had the option to request a ninety-day imprisonment for each debt.

Another proposal concerns the threshold of debt amount that allows creditors to request imprisonment. In the last version of the implementation law (number 9 of the year 2022), this amount must exceed three thousand JD.

Despite these modifications in Jordan, imprisonment still remains an effective method to protect creditors' rights, and the current situation, based on the temporary postponement of imprisonment, still does not comply with the ICCPR. Therefore, the only way for Jordan to fully adhere to the international convention is to enact a clear and direct modification to the implementation code, which would involve the abolishment of debtor imprisonment.

By doing so, Jordan would be in compliance with the international convention by eliminating imprisonment for debts. However, while making these modifications to the Implementation Law, Jordan must also consider protecting creditors' rights by implementing certain safeguards for them.

It is evident that Defense Order 28 has caused damages to creditors, as the government did not provide them with any guarantee to safeguard their rights.

Conclusion:

In light of the comprehensive legal analysis conducted in this study, the following conclusions are drawn:

- The issuance of Defense Order Number 28 in Jordan to address the repercussions of the Coronavirus Pandemic has resulted in the suspension of ordinary state laws. This significant measure has far-reaching implications on legal procedures and individual rights.

- Notably, the application of the Defense Law of 1993 in Jordan's history marks a crucial legal precedent. The impact of this application on the legal landscape warrants further examination and consideration in future cases and policymaking.
- The examination of the postponement of imprisonment under the defense order reveals that it is contingent on specific criteria related to the total debt amount. The implications of such postponement, along with the creditor's ability to request prohibition of debtor departure, raise pertinent questions concerning due process and individual liberties.
- The research identifies a significant concern regarding Jordan's adherence to its international obligations, particularly concerning Article 11 of the International Covenant on Civil and Political Rights. The potential discrepancy between domestic laws and international commitments merits serious scrutiny and resolution.
- The legal landscape in Jordan appears to favor debtors, raising valid concerns about the equitable protection of creditors' rights. This disparity requires thoughtful consideration and potential reforms to strike a fair balance between the interests of both parties.
- The researchers posit that the postponement of debtor imprisonment, as mandated by the defense order, serves as a preliminary step towards potentially abolishing the imprisonment of debtors altogether. The underlying legal principles and societal implications of such a development necessitate further investigation.
- To ensure a just and balanced legal framework, it is recommended that policymakers explore various strategies. This includes considering the possibility of allowing creditors to receive a percentage of the total debt as compensation or devising effective mechanisms to enforce creditor rights. Additionally, temporary privileges, such as facilitating loans with competitive interest rates, may be employed to address the financial responsibilities of both debtors and creditors.

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